

**AFFIDAVIT IN SUPPORT OF AN
APPLICATION FOR A SEARCH WARRANT**

I, FBI Task Force Officer Brett Fernald, depose and state as follows:

AGENT BACKGROUND

1. I am a Task Force Officer with the Federal Bureau of Investigations (FBI), and have held this title since I was assigned to the Special Enforcement Division in June 2019. My duties and responsibilities as a Task Force Officer include investigating and supporting operations involving national security matters and federal criminal violations that include international and domestic terrorism, crimes against children, narcotics, and other criminal violations. I am also a Police Officer with the city of Manchester, NH and have been so employed since April 2013. I have been assigned to the Manchester Police Department (“MPD”) as a Detective since August of 2016. Prior to my employment with MPD, I was a Police Officer for the town of Hooksett, NH from December 2010 until April 2013. I graduated from the New Hampshire Police Standards and Training Class 154 in April 2011. I have received training from the Manchester Police Department in-house training academy and the New Hampshire Police Standards and Training full-time police academy. I have also attended numerous training courses covering many different aspects of investigations. Prior to joining the Hooksett Police Department in 2010, I served honorably in the US Army from 2006 to 2010.

2. Throughout my career, I have led and/or been involved with investigations of homicides, sexual assaults, robberies, assaults, burglaries, arsons, and other serious crimes.. My investigations have included the use of the following investigative techniques: physical surveillance; handling of cooperating sources and witnesses; exploitation of cellular, social media, and Internet Protocol (“IP”) based communications data; execution of search and seizure warrants; and the execution of arrest warrants.

3. Based on my training, experience, and information provided to me by other law enforcement officers, I am familiar with the modus operandi used by individuals engaged in the violation of various criminal offenses, such as those related to acts of violence and firearms. For example, I have handled many cooperating sources and witnesses who have provided information to me specifically related to various firearms offenses and violent crimes. Many of these investigations have resulted in the execution of search warrants, arrest warrants, and eventual convictions.

PURPOSE OF AFFIDAVIT

4. I make this affidavit in support of an application for a search warrant under Federal Rule of Criminal Procedure 41 and 18 U.S.C. §§ 2703(c)(1)(A) for information about the location of the cellular telephone assigned call number [REDACTED]-6863, with International Mobile Subscriber Identity Number [REDACTED] and subscriber name Connected Vets #13 (the “Target Cell Phone”), whose service provider is T-Mobile, a wireless telephone service provider headquartered at 4 Sylvan Way, Parsippany, New Jersey. The Target Cell Phone is described herein and in Attachment A, and the location information to be seized is described herein and in Attachment B.

5. Based on the information contained herein, there is probable cause to believe that David BERARD has violated 18 USC 922(a)(6) [False Statement Made to a Dealer in Acquisition of a Firearm]. There is also probable cause to believe that the location information described in Attachment B will constitute evidence of this crime.

6. The court has jurisdiction to issue the proposed warrant because it is a “court of competent jurisdiction” as defined in 18 U.S.C. § 2711. Specifically, the Court is the United

States District Court, District of New Hampshire: a district court of the United States that has jurisdiction over the offense being investigated, *see* 18 U.S.C. § 2711(3)(A)(i).

7. The information set forth in this affidavit is based on my personal participation in this investigation, as well as my training and experience, and information received from other law enforcement officers. I have not set forth every detail I or other law enforcement officers know about this investigation but have set forth facts that I believe are sufficient to evaluate probable cause as it relates to the issuance of the requested warrant.

PROBABLE CAUSE

8. On June 27, 2022, a resident of Los Angeles, CA submitted an online tip to the FBI National Threat Operations Center (NTOC) via tips.fbi.gov that an Instagram user “thedavidyouloved” had sent a message threatening to commit mass violence. The resident reported to the FBI that a message was posted by “thedavidyouloved” to the account of her daughter, who is also a California resident. The message appears to have been posted on June 25, 2022.

9. Below is a screenshot captured of the content of the posted message:



10. The Instagram account that was associated with “thedavidyouloved” also showed pictures of firearms and a video of a male subject pointing two firearms at a mirror, which were posted within short temporal proximity—approximately one day—to the posting of the

threatening message. The male subject in the video posted to Instagram on June 26, 2022 is seen with two separate firearms pointed into a mirror while he makes statements including “this is what I got for you bitch ass nigga, right there in the dick hole, I’m gonna shoot the dick right off.”

11. Below are screen shots taken from the posts:



12. On June 27, 2022, law enforcement sent a preservation request and emergency voluntary disclosure request to Meta (the parent company of Instagram) for information regarding the user “thedavidyouloved”. Later that day, law enforcement received information from Meta that the subject associated with the account was David BERARD, date of birth [REDACTED] 1984. The telephone number associated with the account is [REDACTED] and the IP address associated with the account is [REDACTED] and came back to Boston, MA.

13. An “Officer Safety” warning from the New Hampshire Information and Analysis Center (NHIAC) circulated later on June 27, 2022 warned officers of BERARD’s threat, and advised that BERARD’s last known address was at the New England Center and Home for

Veterans (17 Court Street Boston, Massachusetts). However, the bulletin also advised that BERARD had recently obtained a New Hampshire Driver's License on June 22, 2022. Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") personnel conducted a query of BERARD through the Criminal Justice Information System, and confirmed that on June 22, 2022, BERARD was issued a New Hampshire driver's license [REDACTED], which bore a Manchester, New Hampshire address.

14. ATF Special Agent John Cook contacted the Manchester Firing Line, a federally licensed firearms dealer, and requested a search for any purchases made by BERARD. Manchester Firing Line advised that on June 23, 2022, BERARD purchased the following three (3) firearms:

- a. Sig Sauer model P320 X-Carry 9mm pistol (Serial Number 58J328181)
- b. Glock model 43X 9mm pistol (Serial Number BXCL871)
- c. Colt M4 5.556 rifle (Serial Number CR718204)

15. When purchasing the firearms, BERARD completed an ATF Form 4473. On that form, BERARD listed his residence as 55 S. Main Street, Manchester, New Hampshire. He also presented his New Hampshire Driver's License, which listed his address as 55 S. Main Street, Apartment #1005, Manchester, New Hampshire.

16. On June 28, 2022, ATF Special Agent John Cook spoke to management at 55 S. Main Street, Manchester, New Hampshire. Management at that location advised that BERARD applied many years ago—on June 30, 2012—to live at the location, but never did reside there. On June 29, 2022, a detective of the Manchester Police Department spoke to a resident at 55 S. Main Street, Apartment #1005, who said that she had allowed BERARD to stay overnight at her

residence as a guest earlier in the month because she believed him to be homeless, but she has not permitted him to stay there since.

17. Boston Police advised that David BERARD is believed to be homeless and living in the Boston area. Boston Police Department Detective Luis Anjos advised that security officers at the Boston Health Care for the Homeless Program (780 Albany Street Boston, MA) reported that BERARD has been repeatedly seen in the area. Additionally, the Night Desk Supervisor at the Veteran Shelter (17 Court Street Boston, MA), advised on June 27, 2022 that she recognized BERARD but that he had not stayed at the shelter for the last two-to-three weeks.

18. Due to the nature of BERARD's message and purchase of firearms, the Boston Regional Information Center began to "ping" his last known phone number: [REDACTED]. That phone number was the same as the number associated with the Instagram account for "thedavidyouloved." Subscriber information was obtained from T-Mobile and revealed that the subscriber name connected to the number was "Connected Vets #13," with International Mobile Subscriber Identity Number [REDACTED], and the subscriber name effective date was March 29, 2021.

19. Pinging this phone number and other investigative methods led law enforcement to locate BERARD, who had a phone on his person (the Black iPhone), at a shopping center at 30 March Ave. in Manchester, NH on June 29, 2022. The male subject seen in the video of "thedavidyouloved" matched the appearance of BERARD.

20. Upon making contact with BERARD, he was initially transported to Elliot hospital for an involuntary hospital admission. BERARD was in possession of the Black iPhone and several bags containing his belongings at the time he was to be transported to the hospital.

David Berard was also in possession of three firearms, two of which were handguns and matched the description of the firearms seen on his Instagram page, “thedavidyouloved.” He was also in possession of various types of ammunition. His belongings were taken by law enforcement for safe keeping. He was subsequently arrested by ATF agents at the hospital on probable cause for a charge of violating 18 USC 922(a)(6) [False Statement Made to a Dealer in Acquisition of a Firearm], based on the false residence that he stated on ATF Form 4473, which he used to purchase the three firearms from Manchester Firing Line.

21. In my training and experience, I have learned that T-Mobile is a company that provides cellular telephone access to the general public. I also know that providers of cellular telephone service have technical capabilities that allow them to collect and generate information about the locations of the cellular telephones to which they provide service, including cell-site data, also known as “tower/face information” or “cell tower/sector records.” Cell-site data identifies the “cell towers” (i.e., antenna towers covering specific geographic areas) that received a radio signal from the cellular telephone and, in some cases, the “sector” (i.e., faces of the towers) to which the telephone connected. These towers are often a half-mile or more apart, even in urban areas, and can be 10 or more miles apart in rural areas. Furthermore, the tower closest to a wireless device does not necessarily serve every call made to or from that device. Accordingly, cell-site data provides an approximate location of the cellular telephone but is typically less precise than other types of location information, such as E-911 Phase II data or Global Positioning Device (“GPS”) data.

22. Based on my training and experience, I know that T-Mobile can collect cell-site data about the Target Cell Phone. I also know that wireless providers such as T-Mobile typically collect and retain cell-site data pertaining to cellular phones to which they provide

service in their normal course of business in order to use this information for various business-related purposes.

23. The requested historical location information associated with the Target Cell Phone is likely to aid in identifying locations recently frequented by BERARD, which will aid in establishing his residence at the time surrounding when he stated on the ATF Form 4473 that his residence was at 55 South Main Street in Manchester, NH.

AUTHORIZATION REQUEST

24. Based on the foregoing, I request that the Court issue the proposed search warrant, pursuant to Federal Rule of Criminal Procedure 41 and 18 U.S.C. § 2703(c).

25. I further request that the Court direct T-Mobile to disclose to the government any information described in Attachment B that is within the possession, custody, or control of T-Mobile. Because the warrant will be served on T-Mobile, who will then compile the requested records at a time convenient to it, reasonable cause exists to permit the execution of the requested warrant at any time in the day or night.

/s/ Brett Fernald
Brett Fernald, Task Force Officer
Federal Bureau of Investigation

The affiant appeared before me by telephonic conference on this date pursuant to Fed. R. Crim. P. 4.1 and affirmed under oath the content of this affidavit and application.

Date: Sept 14, 2022
Time: 4:00 PM, Sept 14, 2022

/s/ Andrea K. Johnstone
HONORABLE ANDREA K. JOHNSTONE
UNITED STATES MAGISTRATE JUDGE

ATTACHMENT A

Property to Be Searched

This warrant applies to records and information associated with the cellular telephone assigned call number (316) 992-6863, with International Mobile Subscriber Identity Number 310260012401570 (“the Account”), that are stored at premises controlled T-MOBILE (“the Provider”), headquartered at 4 Sylvan Way, Parsippany, New Jersey.

ATTACHMENT B

Particular Things to be Seized

I. Information to be Disclosed by the Provider

To the extent that the information described in Attachment A is within the possession, custody, or control of the Provider, including any information that has been deleted but is still available to the Provider or that has been preserved pursuant to a request made under 18 U.S.C. § 2703(f), the Provider is required to disclose to the government the following information pertaining to the Account listed in Attachment A for the time period March 29, 2021 to July 1, 2022:

- a. The following information about the customers or subscribers of the Account:
 - i. Names (including subscriber names, user names, and screen names);
 - ii. Addresses (including mailing addresses, residential addresses, business addresses, and e-mail addresses);
 - iii. Local and long distance telephone connection records;
 - iv. Records of session times and durations, and the temporarily assigned network addresses (such as Internet Protocol (“IP”) addresses) associated with those sessions;
 - v. Length of service (including start date) and types of service utilized;
 - vi. Telephone or instrument numbers (including MAC addresses, Electronic Serial Numbers (“ESN”), Mobile Electronic Identity Numbers (“MEIN”), Mobile Equipment Identifier (“MEID”); Mobile Identification Number (“MIN”), Subscriber Identity Modules (“SIM”), Mobile Subscriber Integrated Services Digital Network Number (“MSISDN”); International Mobile Subscriber Identity Identifiers (“IMSI”), or International Mobile Equipment Identities (“IMEI”);
 - vii. Other subscriber numbers or identities (including the registration Internet Protocol (“IP”) address); and
 - viii. Means and source of payment for such service (including any credit card or bank account number) and billing records.

b. All records and other information (not including the contents of communications) relating to wire and electronic communications sent or received by the Account, including:

i. the date and time of the communication, the method of the communication, and the source and destination of the communication (such as the source and destination telephone numbers (call detail records), email addresses, and IP addresses); and

ii. information regarding the cell tower and antenna face (also known as “sectors”) through which the communications were sent and received.

II. Information to be Seized by the Government

All information described above in Section I that constitutes evidence of violations of 18 USC 922(a)(6) involving DAVID BERARD during the period March 29, 2021 to July 1, 2022.

Law enforcement personnel (who may include, in addition to law enforcement officers and agents, attorneys for the government, attorney support staff, agency personnel assisting the government in this investigation, and outside technical experts under government control) are authorized to review the records produced by the Provider in order to locate the things particularly described in this Warrant.

**CERTIFICATE OF AUTHENTICITY OF DOMESTIC
RECORDS PURSUANT TO FEDERAL RULES OF EVIDENCE
902(11) AND 902(13)**

I, _____, attest, under penalties of perjury by the laws of the United States of America pursuant to 28 U.S.C. § 1746, that the information contained in this certification is true and correct. I am employed by T-MOBILE, and my title is _____.

I am qualified to authenticate the records attached hereto because I am familiar with how the records were created, managed, stored, and retrieved. I state that the records attached hereto are true duplicates of the original records in the custody of T-MOBILE. The attached records consist of _____ **[GENERALLY DESCRIBE RECORDS (pages/CDs/megabytes)]**. I further state that:

a. all records attached to this certificate were made at or near the time of the occurrence of the matter set forth by, or from information transmitted by, a person with knowledge of those matters, they were kept in the ordinary course of the regularly conducted business activity of T-MOBILE, and they were made by T-MOBILE as a regular practice; and

b. such records were generated by T-MOBILE's electronic process or system that produces an accurate result, to wit:

1. the records were copied from electronic device(s), storage medium(s), or file(s) in the custody of T-MOBILE in a manner to ensure that they are true duplicates of the original records; and

2. the process or system is regularly verified by T-MOBILE, and at all times pertinent to the records certified here the process and system functioned properly and normally.

I further state that this certification is intended to satisfy Rules 902(11) and 902(13) of the Federal Rules of Evidence.

Date

Signature